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2
3 **So Ordered.**



Patricia C. Williams
Patricia C. Williams
Bankruptcy Judge

4 **Dated: April 17th, 2013**
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8 UNITED STATES BANKRUPTCY COURT
9 EASTERN DISTRICT OF WASHINGTON

10 In re:

11 LLS AMERICA, LLC,

12 Debtor.

No. 09-06194-PCW11

13 BRUCE P. KRIEGMAN, solely in
14 his capacity as court-appointed
15 Chapter 11 Trustee for LLS America,
LLC,

16 Plaintiff,

Adv. No. 11-80297-PCW11

17 vs.

18 0817726 BC, LTD., et al.,

19
20 Defendants.
21

MEMORANDUM DECISION RE:
PLAINTIFF'S MOTION TO COMPEL
CONCERNING DEFENDANT
GERHARD KRIEF (ECF NO. 432)

22 The purpose of this decision is to provide guidance to the parties concerning
23 plaintiff's Motion to Compel Discovery (ECF No. 432) compelling defendant Gerhard
24 Krief (hereinafter "named defendant") to answer discovery and to resolve said motion.
25 As there are numerous related adversary proceedings brought by the same plaintiff in
26 which similar discovery issues may arise, this memorandum decision should also be of
27 guidance in those adversaries.
28

1 Counsel for the named defendant appeared at the hearing on April 15, 2013, but
2 had filed a motion to withdraw from representation of the named defendant. Counsel for
3 the named defendant has agreed to provide a copy of this Memorandum Decision and
4 Order Granting Plaintiff's Motion to Compel to the named defendant, together with any
5 revised discovery requests by the plaintiff. Defendant's counsel, per the agreement, may
6 then seek an order of withdrawal.

7 The named defendant must comply with this Memorandum Decision and Order
8 Granting Plaintiff's Motion to Compel, whether without the benefit of counsel or
9 whether with new counsel. To date, no explanation has been provided justifying the
10 failure to respond to the many interrogatories and requests for production. Nor has any
11 explanation been provided supporting the basis for the numerous objections to the same.

12 FACTS

13 The interrogatories were initially served December 27, 2012, with the responses
14 received January 29, 2013. Plaintiff's motion to compel discovery was filed March 26,
15 2013 (ECF No. 432). Counsel for the named defendant filed a motion to withdraw in the
16 District Court under case No. 11-cv-00360-RMP on March 25, 2013 (District Court ECF
17 No. 76). The standards concerning compliance with discovery rules are applicable to
18 both unrepresented parties and those that are represented by counsel.

19 Based solely upon a review of the responses to the interrogatories and requests to
20 produce, it appears likely that the responses were not formulated in good faith. Although
21 a few of the objections are well taken, overall the responses ignore the spirit of discovery
22 as well as the rules regarding discovery. The objection, which is based upon the lack of
23 any temporal limits, is well taken. Plaintiff must amend or supplement the discovery to
24 provide a temporal limit.

25 Not a single document was produced in response to 19 document requests. There
26 is simply no response of any kind to many of the interrogatories. Most of the objections
27 to the interrogatories are ill founded and/or spurious. For example, Interrogatory No. 1
28 requests the full name, residential address, and date of birth of the named defendant. No

1 information is provided due to the objection that the information sought is not relevant.
2 It is difficult to imagine a lawsuit where the full legal name of the defendant is
3 irrelevant. In this and other related adversaries, defendants have raised issues of
4 insufficiency of service of process and jurisdiction, which certainly render a request for
5 information as to residence relevant. As to the request for the date of birth of the named
6 defendant (or date of formation and primary place of business for a corporate defendant)
7 that information too may be relevant.

8 The preliminary conclusion is that the named defendant should be sanctioned
9 \$500 payable to counsel for the plaintiff as partial compensation to plaintiff of the costs
10 of proceeding with the motion to compel.

11 Should the named defendant believe that sanction is inappropriate, an explanation
12 regarding the failure to respond to many of the interrogatories and requests to produce
13 must be served and filed by no later than **May 5, 2013**, together with a motion to
14 reconsider. Should such motion be filed, it is the moving party's duty to contact the
15 court to schedule a hearing.

16 **REQUIREMENTS IN GENERAL**

17 1. Each question or request to produce which contains the word "invest" is
18 objected to on the basis that the term is vague and ambiguous. Plaintiff defined the term
19 at paragraph 20, which definition is adequate to formulate a response by the named
20 defendants. This objection is not well-founded and appears to be an attempt to avoid
21 discovery goals.

22 2. An objection is made to any questions and requests to produce which
23 contain the term "financial statement" on the basis that the term is vague or ambiguous.
24 The term is commonly used not only in the business world, but also in consumer
25 transactions and has a commonly understood meaning. The term is not vague. The
26 objection is overruled. However, to assist the named defendant, the named defendant is
27 advised that the term refers to documents (the plaintiff has included electronic
28 information in the definition of "documents"), which contain information regarding

1 assets and liabilities, and/or income and expenses and/or profit and loss.

2 3. There are several interrogatories and requests regarding expert witnesses.
3 The named defendant has not responded. If no experts have been retained, the named
4 defendant should so state. As to experts on common issues, if the named defendant is
5 relying upon the experts previously identified for the summary judgment hearing
6 regarding common issues as described in the Amended Case Schedule Order Re
7 Common Issues (ECF No. 214) in adversary proceeding No. 11-80299-PCW11, the
8 named defendant should so state. The named defendant is also directed to review the
9 Amended Case Schedule Order Re Non-Common Issues (ECF No. 219) in adversary
10 proceeding No. 11-80299-PCW11, which is applicable in this adversary. The Amended
11 Case Schedule Order Re Common Issues (ECF No. 214) requires experts regarding
12 common issues to be made available for depositions by May 31, 2013. The Amended
13 Case Schedule Order Re Non-Common Issues (ECF No. 219) requires all experts
14 regarding non-common issues to be identified and Rule 26 materials exchanged by
15 June 20, 2013, with all discovery completed by July 15, 2013.

16 Parties responding to discovery are specifically required by Fed. R. Bankr. P.
17 7026(e) to supplement ALL responses to interrogatories, should information be
18 discovered which renders the prior answer incorrect or misleading. As to experts, if and
19 when the named defendant identifies experts, the named defendant must promptly
20 supplement the interrogatories and requests with the appropriate information.

21 4. The named defendant must comply with the requests to produce documents.
22 Fed. R. Bankr. P. 7034 requires that defendants identify each document as being
23 produced in response to a particular request and provide an index of the documents
24 produced. Again, the named defendant is reminded that the definition of “document”
25 includes electronic documents, which are addressed in Fed. R. Bankr. P. 7034(E).

26 5. Some objections refer to a “privilege” as excusing production of documents
27 or communications. The response must be amended to state the nature of the privilege,
28 i.e., attorney-client, spousal, etc. A privilege log is required to be produced for the

1 response, which must include the nature of the item not produced, the date and identity
2 of the person other than the named defendant involved in the communication, i.e.,
3 spouse, attorney, etc. The log must be indexed.

4 **6. Failure to participate and respond to discovery as required in this**
5 **order or Fed. R. Civ. P. 26 may result in sanctions, which may include directing**
6 **that certain facts are established for purposes of the action, prohibiting certain**
7 **claims or defenses, striking pleadings and awarding fees and expenses for delay.**
8 **Fed. R. Bankr. P. 7037; Fed. R. Civ. P. 37(b)(2)(A)(i)-(iv), (c).**

9 **SPECIFIC INTERROGATORIES AND REQUESTS FOR PRODUCTION**

10 A response must be made to each interrogatory and request to produce. Even
11 though a particular interrogatory or request to produce is not specifically identified in
12 this decision, a full and complete response must be made and any objection set forth. By
13 responding, the named defendant is not waiving any such objection. If the named
14 defendant has already provided the requested information or documents, the named
15 defendant must indicate the date which the information was provided and to whom and
16 how it was provided, i.e., attachment to a proof of claim, an e-mail to counsel, etc. The
17 named defendant is cautioned that although some of the requested information may have
18 been provided previously, it may not have been as specific or as complete as is now
19 requested. Because the named defendant is not now represented by counsel, and the
20 level of financial sophistication is unknown, plaintiff may, at its option, choose to clarify
21 any interrogatories or requests to produce, but is only required to do so as specifically
22 required herein.

23 Interrogatory No. 3 - Plaintiff must clarify that this interrogatory and others
24 referring to “claims and defenses,” is limited to claims and defenses of the answering
25 defendant(s).

26 Interrogatory No. 4 - This is one of many interrogatories for which no response
27 was made. The named defendant must describe in detail the actions the named defendant
28 undertook to locate all documents requested, including the identity of any other

1 individuals from whom the named defendant requested assistance in the search.

2 Interrogatory No. 9 - The named defendant must describe in detail the
3 circumstances leading to the decision to invest or loan funds with the debtor.

4 Interrogatory No. 11 - The named defendant must respond with specificity to the
5 best of his recollection and provide the documents referenced in Request for Production
6 No. 4 or, if appropriate, provide a privilege log.

7 Interrogatory No. 13 - This interrogatory must amended or clarified by the
8 plaintiff.

9 Interrogatory No. 15 - An objection is made that the date of the document should
10 not be provided as the documents speak for themselves. In this case, there are instances
11 of undated documents and a postal strike which allegedly prevented delivery of mailed
12 documents. Thus, request for the date of receipt of the documents is relevant.

13 Request for Production Nos. 16 and 17 - These Requests for Production contain
14 an objection that they are vague and ambiguous. They are not. It is difficult to
15 understand how the requests could be made plainer. Should the named defendant
16 continue to object on the basis that the request is unduly burdensome, the objection must
17 set forth the specific basis for the objection and describe the burden imposed.

18 Request for Production No. 19 - The objection that this request duplicates the
19 documents sought in Request for Production No. 5 would have been well-founded if any
20 response had been provided to Request for Production No. 5. All documents sought in
21 Request for Production No. 5 and/or Request for Production No. 19 must be produced.

22 This Memorandum Decision resolves plaintiff's Motion to Compel Discovery
23 (ECF No. 432) and an order will be entered accordingly.

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25 ///END OF MEMORANDUM DECISION///
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